

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2007.

(U 39 M)

Application No. 05-12-002

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and facilities of Pacific Gas and Electric Company.

Investigation 06-03-003  
(Filed March 2, 2006)

**ASSIGNED COMMISSIONER RULING CLARIFYING SCOPING MEMO**

**I. SUMMARY**

Greenlining Institute (Greenlining) filed a motion May 25, 2006 asking the full Commission to reverse the ruling of the Administrative Law Judge (ALJ) partially granting the motion of Pacific Gas and Electric (PG&E) to strike portions of Greenlining's written testimony. The Commission generally disfavors interlocutory appeals except upon an extraordinary showing of good cause. I have carefully reviewed Greenlining's claims. The ALJ properly granted PG&E's motion. However, I will allow Greenlining's testimony on philanthropy issues for limited purposes and clarify my February 3, 2006 Scoping Memo.

## **II. BACKGROUND**

Greenlining Institute (Greenlining) filed a motion May 25, 2006 asking the full Commission to reverse the ruling of the Administrative Law Judge (ALJ) partially granting the motion of Pacific Gas and Electric (PG&E) to strike portions of Greenlining's written testimony in this proceeding. Greenlining has participated as an active party in the proceeding. On February 3, 2006, I issued an Assigned Commissioner Ruling and Scoping Memo for this proceeding. The Scoping Memo noted that the scope of a GRC proceeding is necessarily broad. The Scoping Memo also noted that, unless otherwise indicated, any matters raised in the proceeding or which may be reasonably inferred from the Application are within the scope of the proceeding. The Scoping Memo and Ruling specifically excluded three issues: 1) Formation or Expansion of Public Power; 2) Alternate Forms of Electric Generation; and 3) Philanthropy.<sup>1</sup>

Greenlining filed written testimony on April 28, 2006<sup>2</sup>. On May 11, 2006 PG&E filed a motion to strike portions of Greenlining's written testimony. PG&E moved to strike sections on 1) Greenlining's proposal to increase PG&E's philanthropy and the portion of PG&E's philanthropy going to underserved communities; 2) Greenlining's proposal to revise PG&E's General Order (GO) 77-L reports to show a) PG&E officer compensation next to PG&E's philanthropy, and 2) CEO compensation next to overall cash philanthropy and/or philanthropy to underserved communities; 3) Greenlining's testimony regarding a) use of nuclear power to reduce dependence on oil and gas, and b)

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<sup>1</sup> Assigned Commissioner's Ruling and Scoping Memo, pp. 2-3

<sup>2</sup> See Testimony of John Gamboa,

access to the California Solar Initiative (CSI) program for renters, minorities, and low-income customers; and 4) The qualifications of Greenlining's expert witness Michael Phillips concerning his experience in PG&E's last GRC regarding the Senior Executive Retention Program.

On May 22, 2006, ALJ Timothy Kenney issued an Administrative Law Judge's Ruling which granted in part and denied in part PG&E's motion to strike Greenlining's written testimony. The Ruling granted each part of PG&E's motion, except for PG&E's motion to strike the qualifications of Greenlining witness Michael Phillips.

On May 25, 2006, Greenlining filed a motion for full Commission reconsideration of the ALJ Ruling. Greenlining asks the Commission to find the ALJ erred in granting any part of PG&E's motion to strike. Greenlining requests the entire Commission expeditiously to determine whether the issues of nuclear and solar energy policy, G.O 77-L issues and PG&E's philanthropic giving policies are legitimately raised in this GRC. On May 31, 2006, PG&E filed in opposition to the Greenlining motion. On June 2, 2006, Greenlining filed its reply to PG&E's opposition.

### **III. Discussion**

Greenlining's motion is for interlocutory relief concerning an evidentiary matter during an ongoing proceeding. The Commission has consistently discouraged interlocutory appeals concerning procedural and evidentiary matters except for extraordinary circumstances. Our reluctance to entertain interlocutory matters avoids piecemeal litigation, prevents vexatious interference with the Commission's regulatory functions, and helps the Commission to complete its proceedings within the statutory time periods. (*See, e.g., In re AT&T Communications of California, Inc. & WorldCom, Inc.*, D.02-05-042, 2002 Cal. PUC

LEXIS 286, at \*32 (2002) (“[W]e note that the Commission generally looks with disfavor on interlocutory appeals of ALJ rulings.”); *In re Southern California Gas Co.*, D.03-12-057, 2002 Cal. PUC LEXIS 1061 (2003) (“[O]n rare occasion the Commission may choose to reconsider some interim rulings, including Scoping Memos.”).)

We have said, “Nothing in the Public Utilities Code, or in our Rules of Practice and Procedure, authorize[s] interlocutory appeals as a right of the parties. Interlocutory appeals delay the orderly functioning of the Commission and are not tolerated.” (*In re Roseville Telephone Co.*, D.99-06-051, 1999 Cal. PUC LEXIS 308, at \*42 (1999).)

In this situation, Greenlining’s concerns can best be addressed by clarification of the February 3 Scoping Memo regarding the issue of philanthropy instead of taking the extraordinary step of bringing the interlocutory appeal before the full Commission. Based on his reading of my Scoping Memo, the ALJ correctly ruled on all of the issues in Greenlining’s petition. I find no merit to expanding the current scope of this proceeding regarding the issues of nuclear and solar generation, or the issue of G.O. 77-L. I believe these issues are best handled in other generic commission proceedings.

Greenlining argues that its issues regarding philanthropy are fully supported by PG&E CEO Tom King’s recent testimony in this proceeding. In his testimony, King discusses his vision for PG&E, including issues of employee compensation, corporate responsibility and a goal of providing service in a fashion that reflects the diversity and values of the state of California. Greenlining also argues that the ALJ Ruling is inconsistent with D.06-05-016, our recent GRC decision for Southern California Edison (SCE). That decision discussed a number of issues regarding SCE’s past and future philanthropy.

Further, Greenlining argues that the ALJ Ruling prevents the Commission from reviewing evidence and then making its own decision, in light of all facts and circumstances.

There is no question that the May 22 ALJ Ruling properly interpreted the February 3 Assigned Commissioner Ruling and Scoping Memo regarding philanthropy. The Scoping Memo explicitly stated that issues regarding the type, amount, and beneficiaries of PG&E's philanthropy are outside of the scope of the proceeding. The ALJ did not err in granting PG&E's motion to strike issues on this point.

As the Commission has noted before, philanthropy is an important consideration for PG&E and its parent, PG&E Corporation, just as it is for corporations in general. However, as we have previously indicated, most recently in D.06-05-016 (the most recent Southern California Edison GRC), we have no jurisdiction to order a change in PG&E's giving practices.

Because PG&E's witness has raised the issues, I will allow Mr. Gamboa's testimony into the case for the limited use as evidence of PG&E's corporate responsibility and good corporate citizenship. I will also allow Greenlining's cross-examination of Mr. King on this point, as well as cross-examination of PG&E witnesses on philanthropy as a reference point for executive compensation.

I will therefore clarify the Scoping Memo. Issues of philanthropy as directly related to PG&E's corporate responsibility and citizenship, and executive compensation are within the scope of this proceeding.

**IT IS RULED** that:

1. Greenlining's testimony regarding philanthropy is allowed into the record for purposes of addressing PG&E's corporate responsibility and citizenship. Greenlining may cross-examination PG&E witnesses regarding testimony on corporate responsibility and citizenship, and executive compensation.
2. The February 3, 2006 Scoping Memo is clarified to allow issues of philanthropy as directly related to corporate responsibility and citizenship, and executive compensation.

This order is effective today.

Dated June 9, 2006, at San Francisco, California.

/s/ John A. Bohn

John Bohn  
Assigned Commissioner

## CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated June 9, 2006, at San Francisco, California.

/s/ Ernesto Melendez  
Ernesto Melendez

## N O T I C E

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